

**BOARD OF SUPERVISORS**

**GILA COUNTY, ARIZONA**

Date: October 4, 2005

**JOSÉ M. SANCHEZ**

Chairman

**STEVEN L. BESICH**

Clerk of the Board

**TOMMIE C. MARTIN**

Vice-Chairman

By: Marilyn Brewer

Deputy Clerk

**SHIRLEY L. DAWSON**

Member

Gila County Courthouse  
Globe, Arizona

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PRESENT: Jose M. Sanchez, Chairman; Tommie C. Martin, Vice-Chairman; Shirley L. Dawson, Member; Steven L. Besich, County Manager/Clerk; Marian Sheppard, Chief Deputy Clerk; and, Bryan Chambers, 2<sup>nd</sup> Chief Deputy County Attorney.

The Gila County Board of Supervisors met in Regular Session at 10:00 a.m. this date. Steve Stratton led the Pledge of Allegiance, and Reverend Dan Morton of the First Christian Church delivered the Invocation.

Chairman Sanchez stated that Agenda Item No. 2 would be moved to later in the agenda as Attorney David Kennedy was presently held up in traffic.

Barbara Spivey, Program Supervisor of the Gila County Safe Home, a program of Horizon Human Services, requested the adoption of Proclamation No. 05-05 declaring October 2005 as Domestic Violence Awareness Month in Gila County. Ms. Spivey explained all of the services provided by the Safe Home for domestic violence victims in the Globe-Miami area, as well as the San Carlos and the Hayden-Winkelman areas. She stated that from October 1, 2004, to September 30, 2005, the Safe Home provided shelter for 69 adults and 79 children. The Safe Home also accepts victims from other counties when a high threat exists. She stated that the cost of the operation is \$25,000 monthly so it is necessary to hold fundraisers throughout the year. Ms. Spivey

invited the Board to attend their main annual fundraiser on October 9, 2005. On behalf of the Board, Chairman Sanchez thanked Ms. Spivey for the work she and her staff do in the community. Upon motion by Supervisor Dawson, seconded by Vice-Chairman Martin, the Board adopted Proclamation No. 05-05. **(A copy of the Proclamation is permanently on file in the Board of Supervisors' Office.)**

David Cook of the Gila County Cattle Growers Association requested that the Board of Supervisors develop a policy response to NEPA (National Environmental Policy Act) and the renewal permitting process through the U.S.D.A. (United States Department of Agriculture), Forest Service, Tonto National Forest (hereinafter referred to as Forest Service). Mr. Cook passed handouts to the Board and gave a PowerPoint presentation providing a history of events and letters exchanged between himself and a local mine with the Forest Service over several years regarding the revised, reduced allotment of cattle for many ranches located in Gila County. He also cited the reductions for specific ranches in Gila County. He then made a request to the Board of Supervisors, as follows: 1) for the County to be involved in the NEPA process on grazing allotments in Gila County; 2) that comments be made on the listing of Threatened and Endangered Species with the Forest Service that are in the County; and, 3) that the County take an active role in the new Forest Service plan revision. After discussions were held between Mr. Cook, the Board and Mr. Besich on the best way to proceed, Chairman Sanchez stated that it was the consensus of the Board to schedule this as part of the County's natural resources initiative and proceed from there. Mr. Besich stated that the Board has already set aside some funds for natural resource and water issues. He stated that the Board needs to ensure it doesn't duplicate other's efforts but should figure out the County's specific role. Chairman Sanchez also advised that the Forest Service is holding meetings next week to seek public input concerning key issues for consideration in the land management revision

process and encouraged the Board to attend. Chairman Sanchez thanked Mr. Cook for his presentation.

Upon motion by Supervisor Dawson, seconded by Vice-Chairman Martin, the Board approved Mr. Besich's request to table Agenda Item No. 5 to later in the meeting as some of the attorneys were trying to iron out some legal questions with the Industrial Development Authority.

David Fletcher, Health and Community Services Division Director, requested the authorization of the Health and Community Services Division to submit a Water Quality Improvement Grant Application to the Arizona Department of Environmental Quality (ADEQ). He stated that this \$258,300 Grant would be used to repair wastewater systems that are failing in the Tonto Creek/Christopher Creek area and exceeding certain allowable levels of nitrogen and coliforms. In total, 19 homes have been identified along the creeks that were built over 100 years ago, and the antiquated septic systems of these homes are causing problems to the surface water. These funds will be utilized to bring up to code ten to twelve of the home's wastewater systems that are located within 200 feet of the creeks. Upon motion by Vice-Chairman Martin, seconded by Supervisor Dawson, the Board authorized the submission of a Water Quality Improvement Grant Application to ADEQ.

Steve Stratton, Public Works Division Director, requested authorization to re-advertise Call for Bids No. 072505-2 for the purchase of chips, AB and asphalt for the Copper Region. He stated that because no bids were received he was requesting authorization to re-advertise. Upon motion by Supervisor Dawson, seconded by Vice-Chairman Martin, the Board authorized to re-advertise Call for Bids No. 072505-2.

Mr. Stratton requested discussion by the Board regarding Gila County Resolution No. 93-1-7 as it applies to traffic control devices at Miami Gardens. Mr. Stratton stated that he received a call from Supervisor Dawson who had received a complaint from a citizen about a locked gate in an alleyway that was perceived to be a public road. In researching the plat map, the streets, which

included the County roads and the alleyways, were dedicated to the public in the 1990s by Cities Service Company. Mr. Stratton gave a PowerPoint presentation showing the Miami Gardens subdivision. He stated that because these are all public roads (both paved and dirt), by statute, the County may choose whether or not to maintain them, and in this particular area the County has been maintaining these roads. He stated that when it was determined that the alleyway was a public road the gate was removed. At that time, Mr. Stratton stated that he was unaware that a Resolution had been passed by a previous Board in 1993 until it was later brought to his attention by residents who want the gate to remain. He then located the Resolution and gave it to the County Attorney and consulting engineers for their opinions. He stated that in the Resolution it refers to the Manual on Uniform Traffic Control Devices (MUTCD) which is followed on all County road signing. Mr. Stratton stated that in the opinions he's received, the gate is not a traffic control device; only signage are control devices. Mr. Stratton stated that while he can understand the residents' desire to have the gate there, he would be remiss in his duties to advise the Board to allow the gate to remain. In his opinion, Mr. Stratton stated that there are two options for the Board to consider, as follows: 1) leave the gate down and the County can continue to expend public funds to maintain the road; and, 2) if the gate remains, then Public Works recommends no longer maintaining the road and could vacate the road to the residents residing in the area of the gate. He stated concern with the County maintaining a deeded road when only the people beyond the gate benefit; the general public does not benefit. It may be construed as a gift of public funds to benefit only a few people, and it would be improper to maintain any road that is gated. Another concern he cited is the possibility of the County incurring liability for emergency vehicles in that area. Vice-Chairman Martin stated that the County should be uniform in all areas pertaining to gated roads. If the roads are gated, they are not maintained by the County; however, if not gated, the County will maintain them. Supervisor Dawson stated the original complaint

she received came about because of a brush fire in that area and a complaint that the County was not keeping the brush out of the area. While driving around the area, Supervisor Dawson found this wired-shut gate, and her concern was for emergency vehicles having access to this area in the event of a fire, so she contacted Mr. Stratton about the gate. At this time Chairman Sanchez called on Lawrence Center, a resident of Miami Gardens. Mr. Center stated that it was his understanding that the gate was originally installed by the County because of racing traffic and for the protection of children playing in the alley. He stated that emergency services have never used the alley and that the fire hydrants and water are located on the main street, along with a large turnaround area. Mr. Center stated the County has much bigger hazards in that area that it should be addressing, one being the emergency road to the train trestle in the event of an accident there. He requested that the gate be replaced. Robert Zache, also of Miami Gardens, spoke in opposition to the gate. Chairman Sanchez stated the Board also received letters from William and Bethel Bennett, Mr. Centers, Mark and Tamara Kieren, and Brent Bingham in favor of the gate remaining. He received a letter from the Tri-City Fire Chief in opposition to the gate, as well as a petition signed by 9 people also opposed. Chairman Sanchez, speaking to Mr. Stratton, stated that he was concerned with the manner in which that the gate was taken down, as it was placed there by a Resolution of a previous Board, that probably directed the Supervisorial District 3 Road Department to install the gate. He stated that if the previous Board put it there by action, then it should require a similar action by this Board to remove the gate. Mr. Stratton stated that if he had known there was a Resolution by the Board, he would have brought this issue to the Board prior to taking action. Supervisor Dawson stated that she appreciated Mr. Stratton taking the action and she *“doesn’t mind taking the heat for the action.”* She stated that any time Mr. Stratton sees a dangerous situation, it is his responsibility to take action. Vice-Chairman Martin stated, *“that’s why we have management to be able to deal with these situations in a*

*timely manner...but I agree that if the Board took the original action, we need to take action to remove previous Board action.”* Mr. Stratton stated that because of the way the item is listed on the agenda no action could be taken at this meeting. Chairman Sanchez requested that the item be placed on the agenda for next week’s meeting. Mr. Besich stated that an alternative would be to vacate half of that back road to each of the property owners and discontinue County maintenance. Mr. Stratton stated that the County has a process in place for the abandonment or vacation of property. The forms are available in the Engineering Department and the paperwork needs to be submitted to his office before being brought to the Board. Chairman Sanchez inquired about the abandonment process for the entire easement. Mr. Stratton stated that 50% of the easement must go to the adjacent property owner, along with 50% to the mine owner. He stated that after the application for abandonment is received, the first process would be for the County to see if it has a use for the property and to also notify the utility companies to see if there are utilities in that easement that the County would need to continue to hold. He stated that it is a lengthy process. No action was taken by the Board at this time.

Chairman Sanchez moved back to Agenda Item No. 2, which was a request by Vice-Chairman Martin that the County staff be instructed to implement Gila County Water Attorney David Kennedy’s plan of action for the collection, development and analysis of adequate technical data to provide the Board of Supervisors with factually specific legal advice regarding pumping and landfill issues relative to the Star Valley area. He then called on Mr. Kennedy. Supervisor Dawson stated that her concern is on the policies, procedures and practices of the Board on consultants. She stated it is a “procedural thing” on whether the Board does the hiring or whether the Board has delegated to Mr. Kennedy that authority of the Board and asked Mr. Kennedy to address that issue. Mr. Kennedy stated that was an issue the Board may wish to hear in executive session. In being hired by the County, Mr. Kennedy stated that he was to address various issues in Star Valley, which are primarily groundwater

deposits in Star Valley and the relationship with the Star Valley landfill. In his letter to Mr. Besich, Mr. Kennedy stated that in regard to the landfill issue, in “big letters” the County has potential liability, but from the County and State data it is not known at this time if there is an existing problem. He stated that to resolve that issue more information is required and that information needs to be assembled and interpreted. Mr. Kennedy suggested that the Board employ a consultant through him for reasons to be addressed later. Mr. Kennedy stated that he, not the Board, had hired hydrologist Herbert Schumann and he had given the Board Mr. Schumann’s resume and schedule of charges. He then gave an overview of Mr. Schumann’s work experience. Mr. Kennedy stated that the County would best be served, not by simply having reports prepared by specific interest groups, but by having someone who can look at those reports or suggest additional work needed, which would be very minimal, to confirm or disaffirm the factual situation in Star Valley. Mr. Kennedy stated that, at his request, Mr. Schumann was given an orientation tour of the landfill by Harry Jones who works for the County. Mr. Schumann also visited with the Payson Town Council. Mr. Kennedy stated that Mr. Schumann has been invited to participate in the selection committee for the Town of Payson’s safe water yield study of Star Valley, which will allow both the Town of Payson and the Board of Supervisors to consider the impacts of the transportation of water from Star Valley. He stated that Mr. Schumann has also been asked to sit on the Town of Payson’s review committee. He believes that the Town of Payson’s recognition of Mr. Schumann’s expertise is a confidence builder. Mr. Kennedy stated that if the safe yield report indicates that future drilling in the Star Valley area will have no direct bearing on the existing landfill and other issues, that is something this Board needs to know. If the safe yield study indicates that further drilling and further extraction of water from Star Valley may have the affect of exacerbating contamination or speeding up the contamination process, that’s information the Board and Town of Payson need to know. Mr. Kennedy stated that there

are two concerns for the County regarding Star Valley, as follows: 1) the existing landfill may represent some potential to contaminate groundwater; and, 2) from the liability point of view and also from the point of view that the groundwater under Star Valley is a very important resource for that portion of the County, steps must be taken so the Board and citizens of Star Valley know that the water supply is safe. Vice-Chairman Martin inquired if the Wellhead Protection Act would be the answer to the Star Valley water issues, and could the Board use it as presently written or would something have to be designed for Star Valley? Mr. Kennedy stated that he has consulted this Federal Act of 1996, which provides for local government entities to be able to undertake certain kinds of actions. His initial reaction to use the Wellhead Protection Act is that it isn't the "fix" for the specific problems that are faced in the Star Valley area; however, after second thought, there might be some provisions in the Act that may be beneficial. Mr. Kennedy stated that the fundamentals of taking an action under that Act would require an understanding of the geology in that area; however, he has not found any studies done that are specific to that area. He continued that many provisions of the Act refer to actions that can only be taken by municipal governments, so not all of the provisions are available to the County. He stated there appears to be provisions under the Act where the County could be funded to pay for some of the work that he's proposing to be undertaken, as well as for remedial work if found to be necessary. He doesn't know if some of the actions allowed under the Act will have any bearing on Star Valley, so at this time he could not answer that question. Vice-Chairman Martin inquired if there is some type of aquifer permit process required at the landfill. Mr. Stratton stated the County has aquifer protection and is compliant with all of those issues at all County landfills, and that is why there is a monitoring well. Mr. Kennedy then introduced Herbert Schumann to the Board. Mr. Schumann gave an overview of his professional background to the Board. He stated he has worked for 32 years with the Water Resources Division of the U.S. Geological Survey (USGS), working both throughout



Arizona and internationally. Mr. Schumann stated that two issues touched on were, as follows: 1) the landfill, with very limited data which is not adequate to answer questions, and he believes Mr. Stratton's request for further studies is in order; and, 2) in regard to safe yield, he has testified as a representative of USGS before the Arizona Legislature in 1980-81 on the Groundwater Act, in which safe yield was one of the key components, so he's very familiar with the concept. He believes the safe yield study is needed to answer many of the questions, and it would be in the best interest of all parties if a reputable firm performs that study. Supervisor Dawson inquired if Mr. Schumann has met with the Diamond Star Water Coalition (DSWC) or its experts to also review their information. Mr. Schumann stated that he has not met with that particular group. Supervisor Dawson stated that she would try to facilitate a meeting for him with the DSWC.

Upon motion by Vice-Chairman Martin, seconded by Supervisor Dawson, the Board convened into Executive Session at 11:37 a.m.

Upon motion by Vice-Chairman Martin, seconded by Supervisor Dawson, the Board reconvened into Regular Session at 12:03 p.m.

Chairman Sanchez requested that Mr. Kennedy go over his letter with the Board. Mr. Kennedy stated that section 1 of his letter to Mr. Besich, dated October 3, 2005, deals with the Star Valley landfill. He is proposing that Mr. Schumann work with Mr. Stratton, along with the County's landfill consultant to determine the adequacy of the current monitoring practices at the landfill. Mr. Kennedy also gave the following information: There is not geological planning and evaluation as to whether the two wells located down slope from the landfill were strategically and appropriately placed. It would appear that at least one additional test site for a sampling well should be developed. In reference to the landfill, it must first be determined what is in the deposit itself, but because of the encapsulation, information required will be developed by test hole core sampling in shallow holes close enough to the deposit so a reasonable determination can be made as to what is underneath the deposit,

what the deposit is sitting on, and the likelihood of that deposit moving through the underlying strata and into the groundwater. Hopefully, with the core drilling, sufficient information will be developed to determine, based on technical information, that the landfill deposit is stable; however, with a different set of findings, there may be the possibility of migration. There is also the possibility that a substantial increase in groundwater pumping from the Star Valley area to transport to Payson could accelerate migration of contaminants in the landfill deposit. If there is a possibility of migration, then it will need to be determined if migration will be exacerbated by deep pumping. Mr. Kennedy then requested that the Board approve his hiring of Mr. Schumann. Mr. Kennedy also stated that one additional policy question facing the Board is whether it should take a position in regard to further development of groundwater resources in Star Valley. Vice-Chairman Martin inquired if Mr. Kennedy would review the Mogollon Study Group information, which included Star Valley in that study. Mr. Kennedy stated that the Board may wish to have him attend some of that Group's meetings periodically; however, the Board is presently represented in that Group by Harry Jones. Mr. Kennedy stated that he has not included that in his proposal, unless Mr. Schumann has additional information that he is unaware of at this time. Mr. Schumann stated that he has attended one of those meetings for the purpose of receiving two technical briefings. He has also met with people at the Bureau of Reclamation as he has done extensive work on the Central Arizona Project. Mr. Schumann feels that it's important for the County to keep abreast of the results of that work because of the significant dollars going into the project and future development in that area. Mr. Besich stated that another resource that could be added to assist Mr. Schumann and Mr. Kennedy is Frank Corkhill who is the supervisor for the Arizona Department of Water Resources (ADWR), Hydrology Division, in the technical support section, because 3 years ago the ADWR did some water surveys in the Star Valley area, which could be used as baselines. Chairman Sanchez inquired if the Board agrees with Mr. Kennedy's request to bring on

another consultant, Mr. Schumann. Mr. Besich stated that he is requesting formal authorization and a spending limit that will authorize Mr. Kennedy to hire Mr. Schumann as an expert technical witness as the County prepares independently a review of the actual situation at the Star Valley landfill. Vice-Chairman Martin stated that currently the Board doesn't know, with the information the County currently has from all sources, if it is adequate enough on which to base a decision. She stated the Board does know that the landfill was closed properly, but it is not known if the landfill, because of the geology associated with the landfill, would leach; if there is something leachable within the landfill; and, under what conditions. It is not known if there is adequate or accurate information. Vice-Chairman Martin stated that because of the lack of trust between the people in Star Valley and the Town of Payson, Mr. Schumann could bring an impartial, expert analysis of all the data. She stated that if the Board allows conditions to happen that cause contamination of the groundwater, it is the County's liability all the way around. Supervisor Dawson stated that she believes it is so vital that the person hired be totally impartial so that there is an acceptable report when the work is completed, and reiterated the need for Mr. Schumann to also meet with the DSWC. Mr. Kennedy requested that Supervisor Dawson provide the groups that Mr. Schumann should meet with through Mr. Besich and he will make sure those meetings take place. He stated that the position of Mr. Schumann throughout is that he's not working on any side. Mr. Schumann will deliver to Mr. Kennedy a professional, objective series of findings, and Mr. Kennedy will communicate those findings to the Board. Mr. Schumann stated that he realizes how deep the feelings run in Star Valley on the water issues. Vice-Chairman Martin made the motion that the County staff be instructed to implement Gila County Water Attorney David Kennedy's plan of action for the collection, development and analysis of adequate technical data to provide the Board of Supervisors with factually specific legal advice regarding pumping and landfill issues relative to the Star Valley area, and that a cap of \$35,000 be

placed upon the fees paid by the County to Mr. Kennedy. Mr. Kennedy may re-approach the Board if that amount is exceeded. Supervisor Dawson seconded the motion, and the Board unanimously approved the motion.

Mr. Besich requested that Agenda Item No. 5 be tabled to the October 11, 2005, Board meeting. Upon motion by Vice-Chairman Martin, seconded by Supervisor Dawson, the Board tabled this item to the October 11, 2005, Board meeting.

Upon motion by Vice-Chairman Martin, seconded by Supervisor Dawson, the Board unanimously approved Consent Agenda items A-F as follows:

- A. Approved a request submitted by John Thomas to rent the Fairgrounds Exhibit Hall on November 19, 2005, for a wedding reception.
- B. Authorized the Chairman's signature on a Grant Participant Agreement (Project No. 780507) whereby Arizona State Parks is awarding \$107,064 of grant funds to the Gila County Sheriff's Office for the purchase of two watercraft.
- C. Ratified of the Chairman's signature on Amendment No. 3 to an Intergovernmental Agreement (Contract No. HG361075) between the Gila County Health Department and the Arizona Department of Health Services to change the Price Sheet for the FY 2005 revised budget for WIC.
- D. Approved the August 2005 monthly departmental activity report submitted by the Payson Regional Justice of the Peace.
- E. Approved the personnel reports/actions for the week of October 3, 2005, as follows:

Departure from County Service:

- 1. Community Nutrition Worker I – Health – 09-26-05 – Health Services Fund - Lona Kelley – Hire 05-16-05 – Failure to complete probationary period

Hire to County Service:

- 2. Clerk-Receptionist – Health – 10-03-05 – Health Services Fund - Denise Hansen – replaces Regina Contreras

Temporary Hire to County Service:

3. Clerk – Clerk of Superior Court – 09-26-05 – Document Conversion Fund  
- Samantha Elliott

End Probationary Period:

4. Road Maintenance Worker II – Consolidated Roads – 10-03-05 – Road Fund - Justin Marks
5. Administrative Manager – Emergency Management – 09-19-05 – General Fund - Linda Rodriguez
6. Risk Management Assistant – Emergency Management – 09-19-05 – General Fund – Sarah White
7. Director of Nutrition Services – Health – 10-03-05 – Health Services Fund - Cassandra Burton
8. Animal Control Officer II – Rabies Control – 10-03-05 – Rabies Control Fund - Jason Philpot

Position Review:

9. Anniversary Date Increase – 09-19-05 – Carolyn Haro
10. Anniversary Date Increase – 10-03-05 – Gary Holloway, Jonathan Ortega, Anthony Lopez, Joe Casillas, Jamy Strobach, Judith Edwards, Cecelia Bejarano, Susan Koepf
11. Correct hiring status – Clerk II – Recorder – 09-26-05 – General Fund - Valerie Castaneda – Regular status to Temporary status

**SHERIFF'S PERSONNEL ACTION ITEMS**

Departure from County Service:

12. Detention Officer/EMT – Payson S.O. – 10-07-05 – General Fund  
Mark Dearden – Hire 04-21-03 – Resigned for personal reasons
- F. Approved the finance reports/demands/transfers for the week of October 3, 2005 (separate handout), as follows: \$370,379.15 was disbursed for County expenses by voucher numbers X147456 through X147584 and X373540 through X373768. The hand-issued warrants listing is as follows: X147455 in the amount of \$385.05 and X373539 in the amount of \$1,717.00.

In reference to Agenda Item No. 10, Bryan Chambers requested that the Board consider whether Gila County should authorize the Arizona Attorney General's Office to appeal the Tax Court's decision in the Southwest Gas Corporation v. Arizona Department of Revenue, et al. TX2001-000473.

Upon motion by Supervisor Dawson, seconded by Vice-Chairman Martin, the Board convened into Executive Session at 12:33 p.m. Chairman Sanchez stated that the Board would also remain in Executive Session for legal advice on Agenda Item No. 11, a request by Mr. Besich for the Board to seek legal advice from Eric Walberg, Gila County's Attorney for the former maintenance yard in Star Valley/Chaparral Pines.

Upon motion by Supervisor Dawson, seconded by Vice-Chairman Martin, the Board reconvened into Regular Session at 1:11 p.m.

Upon motion by Supervisor Dawson, seconded by Vice-Chairman Martin, the Board unanimously authorized the Arizona Attorney General's Office to appeal the Tax Court's decision in the Southwest Gas Corporation v. Arizona Department of Revenue, et al. TX2001-000473, as stated in Agenda Item No. 10.

In reference to Agenda Item No. 11, Bryan Chambers stated that at this time no action was required by the Board.

At this time each Board member and the Chief Administrator were presented the opportunity to give a brief summary of current events as allowed by A.R.S. §38-431.02(K).

There being no further business to come before the Board, Chairman Sanchez adjourned the meeting at 1:19 p.m.

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Jose M. Sanchez, Chairman

ATTEST:

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Steven L. Besich, County Manager/Clerk